MONTANA LEGISLATIVE HISTORY

Chapter 512 1975

Bill H 10 S _____ Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 17	✓ C	Hearing Date(s)	Mar 15	✓ C
	Jan 22	✓ C		Mar 15	✓ C
	Feb 24	✓ C		_____	____C
	_____	____C		_____	____C
Date Out	_____	____C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 10

INTRODUCED BY YARDLEY, STOLTZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS THE 'UNIFORM PARENTAGE ACT' RELATING TO MATTERS CONCERNING THE PARENT-CHILD RELATIONSHIP, ITS ESTABLISHMENT AND ITS TERMINATION; AMENDING SECTIONS 61-105 AND 61-205, R.C.M. 1947; AND REPEALING SECTIONS 61-103, 61-108, 93-2901-1 THROUGH 93-2901-11, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as the "Uniform Parentage Act."

Section 2. Parent and child relationship defined. As used in this act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

Section 3. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

Section 4. How parent and child relationship established. The parent and child relationship between a child and

(1) the natural mother may be established by proof of her having given birth to the child, or under this act;

(2) the natural father may be established under this act;

(3) an adoptive parent may be established by proof of adoption.

Section 5. Presumption of paternity. (1) A man is presumed to be the natural father of a child if:

(a) he and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;

(b) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred (300) days after its termination by death, annulment, declaration of

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invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within three hundred (300) days after the termination of cohabitation;

(c) after the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) he has acknowledged his paternity of the child in writing filed with the department of health and environmental sciences or with the district court for the county where he resides, or

(ii) with his consent, he is named as the child's father on the child's birth certificate, or

(iii) he is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(e) he acknowledges his paternity of the child in a writing filed with the department of health and environmental sciences or with the district court of the county where he resides, which court or department shall promptly inform the mother of the filing of the

acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health and environmental sciences or with the district court of the county where the acknowledgment was filed. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(2) A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two (2) or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

Section 6. Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the department of health and

environmental sciences, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

Section 7. Determination of father and child relationship--who may bring action--when action may be brought. (1) A child, his natural mother, or a man presumed to be his father under paragraph (a), (b), or (c) of section 5(1), may bring an action

(a) at any time for the purpose of declaring the existence of the father and child relationship presumed under paragraph (a), (b), or (c) of section 5(1); or

(b) for the purpose of declaring the nonexistence of the father and child relationship presumed under paragraph (a), (b), or (c) of section 5(1) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than five (5) years

after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(2) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to section 5.

(3) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 5 may be brought by the child, the mother or personal representative of the child, the department of social and rehabilitation services or the appropriate county welfare department, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(4) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 14(2), between an alleged or presumed father and the mother or child, does not bar an action under this section.

(5) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

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Section 8. Statute of limitations. An action to determine the existence of the father and child relationship as to a child who has no presumed father under section 5 may not be brought later than three (3) years after the birth of the child, or later than three (3) years after the effective date of this act, whichever is later. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until three (3) years after the child reaches the age of majority. Sections 7 and 8 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

Section 9. Jurisdiction--venue. (1) The district court has jurisdiction of an action brought under this act. The action may be joined with an action for divorce, annulment, separate maintenance, or support.

(2) A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this act with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by rule or statute, including Rule 4B of the Montana Rules of Civil Procedure, personal jurisdiction may be acquired by

service in accordance with Rule 4B of the Montana Rules of Civil Procedure.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

Section 10. Parties. The child shall be made a party to the action. If he is a minor he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the department of social and rehabilitation services or the appropriate county welfare department as guardian ad litem for the child. The natural mother, each man presumed to be the father under section 5, and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

Section 11. Pre-trial proceedings. (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing shall be held. The court may order that the hearing be held before a referee. The public shall be barred from the hearing. A record of the

proceeding or any portion thereof shall be kept if any party requests, or the court orders. Rules of evidence need not be observed.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.

(3) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

Section 12. Blood tests. (1) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(3) In all cases, the court shall determine the number and qualifications of the experts.

Section 13. Evidence relating to paternity. Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child.

Section 14. Pre-trial recommendations. (1) On the basis of the information produced at the pre-trial hearing,

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the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) that the action be dismissed with or without prejudice;

(b) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child in the light of the factors enumerated in section 15(5), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may

designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(c) that the alleged father voluntarily acknowledge his paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1), judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(4) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(5) The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection (1) or (3).

Section 15. Civil action. (1) An action under this act is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent

to testify and may be compelled to testify. Section 11, subsections (2) and (3) and sections 12 and 13 apply to all action brought under this act.

(2) Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

Section 16. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under

section 24.

(3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

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(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others; and

(i) the value of services contributed by the custodial parent.

Section 17. Costs. The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pre-trial proceedings, including blood tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid out of the treasury of the county in which the action is brought.

Section 18. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this act or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable

expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

(2) The court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(3) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

Section 19. Modification of judgment or order. The court has continuing jurisdiction to modify or revoke a judgment or order

(1) for future education and support, and

(2) with respect to matters listed in section 16, subsections (3) and (4) and section 18(2), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under section 16(4) may specify that the judgment or order may not be modified or revoked.

Section 20. Rights to counsel--free transcript on appeal. (1) At the pre-trial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially

unable to obtain counsel.

(2) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

Section 21. Hearings and records--confidentiality. Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any agency of the state or of any political subdivision or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

Section 22. Action to declare mother and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this act applicable to the father and child relationship apply.

Section 23. Promise to render support. (1) Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not

require consideration and is enforceable according to its terms, subject to section 7(4).

(2) In the best interest of the child or the mother, the court may, and upon the provision's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

Section 24. Birth records. (1) Upon order of a court of this state or upon request of a court of another state, the department of health and environmental sciences shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and shall be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

Section 25. Custodial proceedings. (1) If a mother relinquishes or proposes to relinquish for adoption a child

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who has:

(a) a presumed father under section 5(1),

(b) a father whose relationship to the child has been determined by a court, or

(c) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under sections 61-205 and 61-206, R.C.M. 1947, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

(2) If a mother relinquishes or proposes to relinquish for adoption a child who does not have:

(a) a presumed father under section 5(1),

(b) a father whose relationship to the child has been determined by a court, or

(c) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceedings, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not

to exist by a court.

(3) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception of the child at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(4) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with subsection (6) of this section. If any of them fails to appear, or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.

(5) If, after the inquiry, the court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father

and claiming custodial rights, the court shall enter an order terminating the unknown natural father's parental rights with reference to the child. Subject to the disposition of an appeal, upon the expiration of six (6) months after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

(6) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state, or in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate.

Section 26. Uniformity of application and construction. This act shall be applied and construed to

effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Section 27. Section 61-105, R.C.M. 1947, is amended to read as follows:

"61-105. Custody of legitimate child. The father and mother of ~~a legitimate~~ an unmarried minor child are equally entitled to its custody, services, and earnings. If either parent be dead, or unable, or refuse to take the custody, or has abandoned his or her family, the other is entitled to its custody, services, and earnings."

Section 28. Section 61-205, R.C.M. 1947, is amended to read as follows:

"61-205. Persons required to consent to the adoption. An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(1) Both parents, if living, or the surviving parent, of a ~~legitimate~~ child; provided, that consent shall not be required from a father or mother,

(a) adjudged guilty by a court of competent jurisdiction of physical cruelty toward said child; or,

(b) adjudged to be an habitual drunkard; or,

(c) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child; or,

(d) who has, in the state of Montana, or in any other

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state of the United States, willfully abandoned such child; or,

(e) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency, or the state department of public welfare of the state of Montana for a period of one (1) year without contributing to the support of said child during said period, if able; or,

(f) if it is proven to the satisfaction of the court that said father or mother, if able, has not contributed to the support of said child during a period of one (1) year before the filing of a petition for adoption; or (an adoption of a child may be decreed when there have been filed written consents to adoption executed by).

~~(2)--The--mother,--alone,-if-the-child-is-illegitimate; or,~~

~~(3)~~-(2) The legal guardian of the person of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption; or,

~~(4)~~-(3) The executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated, or if both parents are dead, and custody of the child has been

legally vested in such agency with authority to consent to adoption of the child; or,

~~(5)~~-(4) Any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the petition.

The consents required by paragraphs (1) and (2) shall be acknowledged before an officer authorized to take acknowledgments, or witnessed by a representative of the state department of public welfare or of an agency, or witnessed by a representative of the court."

Section 29. Uniformity of application and construction. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Section 30. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 31. Repeal. Sections 93-2901-1 through 93-2901-11, 61-103, and 61-108, R.C.M. 1947, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 10-75

FISCAL NOTE

Form BD-15

In compliance with a written request received January 6, 19 75, there is hereby submitted a Fiscal Note for Senate Bill No. 10 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to move livestock and unprocessed livestock products from class three to class seven for property tax classification purposes. (taxable value of class three property is 331/3% of assessed value; taxable value of class seven property is 7% of assessed value)

ASSUMPTIONS:

1. Assessed value of cattle, sheep, and horses will be $327,531,032 in FY 76 and $347,182,894 in FY 77.

2. Six mills will be levied for universities in FY 76 and FY 77. As much as 8 mills may be necessary in support of public school permissive levy in FY 77.

3. The state livestock commission will continue to have a levy of 11.5 mills on sheep and 10.5 mills on other livestock.

FISCAL IMPACT:

	FY 76	FY 77
1. Tax collections on livestock under current law assuming a 6 mill state levy in FY 76 and FY 77.	$1,803,066	$1,911,234
Tax collection under proposed law.	378,644	401,360
Decrease in collections	$1,424,422	$1,509,874
2. Tax collections on livestock under current law assuming a 6 mill state levy in FY 76 and a 14 mill levy in FY 77	$1,803,066	$2,837,055
Tax collections under proposed law.	378,644	595,782
Decrease in collections	$1,424,422	$2,241,273

CONCLUSION:

Enactment of Senate Bill 10 would result in a revenue loss to the state of approximately $2.9 million to $3.6 million during the biennium.

LOCAL IMPACT:

Significant impact will be felt in counties having a large amount of this tax base in livestock. For example, Beaverhead County would lose about one-fourth of its taxable value in FY 76 or approximately $4.5 million.

Michael B. Badlings

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1/11/75

does not allow enough time to certify absentee ballots, also they need time to do rotation and printing of ballots. Provided each committee member with a schedule of their work in conjunction with the 1976 election (see exhibit).

Other opponents to this bill were Helen Kovich, Lewis & Clark County Clerk and Recorder and Carl Stuckey, a Clerk and Recorder from Bozeman.

Representative Baeth requested a deferrment for decision on this bill as he would like to research what the surrounding states are doing.

HOUSE BILL NO. 10 Representative Dan Yardley, District #74, is chief sponsor of this measure known as the "Uniform Parentage Act" concerning the parent-child relationship, explained the sections of the bill and pointed out that starting with Section 25 it gets into more controversial parts of the bill. Sections 27 and 28 amend existing statutes. This act is not the same as the one introduced in the last session which was defeated in the Senate. Some provisions in the bill are required, some should be adopted and in order to get a study on this it had to be introduced. In the U.S. Supreme Court decision "Family vs. Illinois" it was determined that the father does have certain rights. Under Montana law no provision for the father is made.

Bill Romaine, an attorney representing himself, stated that there were some technical and philosophical provisions that should be straightened out (see prepared statement).

Proponent Rosemany Zion stated she felt the bill should be placed in a subcommittee. Norma Cutone, a proponent representing the SRS stated there were four ways in which this law has much bearing on children born out of wedlock. (see prepared statement). It was pointed out that the committee might want to add "or other tests" as well as a blood test to help determine parentage as other tests are being developed to help determine parentage.

Proponent Shirley Berg, representing the Helena Women's Political Caucus, presented committee with prepared statement.

No other proponents, no opponents. Following brief questions by committee members the hearing was closed.

HOUSE BILL NO. 31 Representative Mike Meloy, District #29, chief sponsor of this bill codifying the final plan of districting and apportionment commission for Montana districts, stated this bill essentially puts into revised codes the district and apportionment plan. This plan, according to the new

Constitution, had to be filed in the Secretary of State's office where it now resides. The Reapportionment Commission which will meet in ten years is the one who can amend the reapportionment plan. This bill puts the plan into the Revised Codes of Montana.

EXECUTIVE SESSION

HOUSE BILL NO. 31 Representative Lory moved DO PASS. Representative Anderson seconded the motion which carried with Representative Hager voting no.

HOUSE JOINT RESOLUTION #1 Representative Lory moved DO PASS. Motion seconded by Representative Vincent and carried.

HOUSE BILL NO. 17 Action deferred until Thursday, January 16, 1975.

HOUSE BILL NO. 10 Placed into subcommittee with Representative Scully as chairman, Representatives Vincent and Anderson will serve on subcommittee.

A motion to adjourn carried unanimously.

HERB HUENNEKENS, CHAIRMAN

HH:pb

File under 1/13/75

NAME William L. Romine BILL NO. HB 10

ADDRESS 320 E 6th DATE 1/13/75

Helena

WHOM DO YOU REPRESENT? self

SUPPORT?_____ OPPOSE?_____ AMEND? X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

HOUSE BILL NUMBER 10

Mr. Chairman, and members of the Committee, my name is William L. Romine, and although I am a registered lobbyist, I appear here today solely as a licensed and practicing attorney.

I support the purposes of House Bill 10, recognizing that we have little law in this state concerning actions to determine parentage and that such legislation is long overdue. However, I do feel that House Bill 10 should be amended in several places to clear up some possible misinterpretations by a court, and also to provide some needed safeguards.

To begin with, Section 5(2) provides that if two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. It is not clear what "policy" is being referred to, and I feel that this language should be clarified to some extent. It may be the policy of some that every child's father should be found, and that a child should not go through life without a known father, and this alone might result in the finding of parenthood.

Section 7 of House Bill 10 has a number of conflicting statements, and also appears to conflict in part with Section 8. I propose that all references in Section 7 concerning time limitations for filing actions to determine parentage should be taken out of Section 7. Since Section 8 establishes a statute of limitations, and I feel that Section 8 is the proper section for setting down the time limitations.

As to a statute of limitations, House Bill 10 provides for four different time limitations. These time limitations run from a minimum of three years after the birth of the child to five years, to three years after the child reaches the age of majority and finally to "at any time". I am not sure that I understand the logic of providing several different statute of limitations, and it would seem to me that one statute of limitation should apply in all instances. It would further appear to me that a relatively short period of statute of limitations should be adopted. A provision allowing an action to be brought three years after a child reaches the age of majority, or in

placing a burden upon an individual that would be impossible to meet. I feel that an action brought within three years after the birth of the child is a much more reasonable period of time. Although I recognize the need to protect children, I think we must also recognize the need to protect presumed or alleged fathers from needless and expensive harrassment many years after the birth of a child.

Section 9(2) of the bill attempts to establish jurisdiction based upon sexual intercourse in this state the result of which may have been the conception of the child in question. Since it is this very activity which is the basis for the action, and which is what must be decided by a jury in a final analysis, this appears to be placing the cart before the horse. With this provision, it would only be necessary for a mother to allege sexual activity with a man, and this in itself would establish jurisdiction of a nonresident. It would appear to me that residency in this state during the period of time when probable conception occured should be the basis for jurisdiction over nonresidents. Residency is a much more definate criteria to be utilized.

Subsection 3 of Section 9 provides that the action may be brought in the county in which the child or the alleged father resides or is found. Traditionally actions are brought in the county where the Defendant resides, and although not necessarily labeled a Defendant under House Bill 10, in final analysis the alleged father is the Defendant. The exceptions to the general venue laws are found in contracts and torts, wherein venue may be brought in the action where contract was to be performed or where the tort was committed. As an alternative, House Bill 10 might provide venue shall be in the county wherein the sexual intercourse occured resulting in the pregnancy. However, I feel that the county wherein the alleged father resides would be the proper county.

Section 11 provides for what is called a pretrial proceeding or in effect a small mini trial before a referee. The only real problem I have to section 11 is the provision found at the top of page 9 which provides that the rules of evidence need not be observed. I agree that in this type of proceeding the rules of evidence are probably not necessary, but I think that the bill should specifically provide that no evidence

would be introduced at the pretrial proceeding, which could be very prejudicial and should be excluded from the trial of the action if objected to by any party.

Section 15(2) prohibits the introduction of testimony relating to sexual access to the mother by any other man at a time other than the probable time of conception, unless such evidence is offered by the mother. Although this is a good general proposition, there would be instances where a Defendant could prove sexual access by an unidentified man with a mother both before and after the probable time of conception, thereby giving an inference of such access during the time of probable conception, but the bill would prohibit the introduction of such evidence. This section should be amended in some way to allow such a presumption to be presented.

Subsection 3 of Section 15 allows an alleged father to introduce evidence of sexual intercourse by a man who is not subject to the jurisdiction of the court only if he alleged father has undergone blood tests, the result of which do not exclude the possibility of being the father of the child, the statute should provided that the action must be dismissed against him. If these actions are to be tried before a jury, and I will speak more about that later, it is very possible and also probable that a jury would determine that the alleged father was the father even though the blood tests showed that he could not possibly be the father. This is known to have happened in other states, although the cases were generally reversed on appeal, and primarily because of sympathy for the minor child and for the mother by the jury. We should not allow a verdict to be entered upon passion or sympathy when the evidence is contrary. There should be a provision in this bill which provides that if the blood tests exclude the possibility of the alleged or presumed father from being the actual father, the court is to dismiss the action against that man.

I spoke a minute ago about the possibility of these actions being tried to a jury. Since the bill does provide for confidentiality, with many provisions safeguarding such confidentiality, it would seem proper to have these cases tried to a court sitting without a jury, unless all parties agree to a jury. This would insure confidentiality, and

[illegible] being entered as a result

Section 25(6) allows posting notice or the publication of notice to identify the natural father of an adoption proceeding. It appears that this would definately violate the confidentiality provided for by House Bill 10 since it would be impossible to post or publish an adequate notice without identifying the mother and child in question.

If House Bill 10 is passed, it will conflict with Section 93-1901-6(5) R.C.M., 1947, which provides that the issue of a wife cohabitating with her husband, who is not impotent, is indisbutably presumed to be legitimate. This would conflict with Section 5 of House Bill 10 and the present statute should be amended to repeal the indisputable presumption.

Finally, there should be the addition of another section to House Bill 10 which provides that if parentage is determined in the action, at the request of the Defendant, the court can then determine custody of the minor child. Since the action is already in progress it would seem that this would be the logical time and place for the court to determine who should have custody of the minor child. Because of the equal rights provisions of our Montana constitution and the various laws which have been enacted under the constitution, and further because House Bill 10 specifically repeals the old provision that the mother of an illegitimate child is automatically entitled to the custody, it may very well be that the court would determine that the father should have the custody of the child. He might possibly be better able financially, or for other legitimate reasons to have custody or the evidence could possibly show that the mother had intentionally become pregnant solely to secure child support from the father. For these reasons the father should be given the opportunity to have the custody provisions laid to rest.

Although I have in this testimony pointed out a number of things that bother me about House Bill 10, I do support its intent and its purpose, and have only made these comments because I feel that if Montana is to have this type of legislation, it should be clean legislation and free of doubt and inequality.

HSR 1

NAME Rosemary B. Jones Bill No. HB 10

ADDRESS 881 So. Emerald Date 1/13/75

WHOM DO YOU REPRESENT? Self

SUPPORT X OPPOSE ____ AMEND ____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I support HB 10 but definitely recommend that this committee table this bill in subcommittee and study it with the assistance of legal counsel to your full satisfaction.

I also recommend that you inquire of SRS as to their present adoption ~~procedure~~ procedures.

WITNESS STATEMENT

Name Harold Clyde Date 1-13-75

Address 836 Front Support ? #9

Representing DRS Oppose ?

Which Bill ? Uniform Parentage Act HB #10 Amend ? X

Comments:

It is important to terminate rights of both parents in custody proceedings. The Social Services Bureau has instructed staff to attempt to determine rights of both parents in preparation for custody actions. This law has particular bearing on children born out of wedlock. Our staff assists in terminating rights of fathers in one of 4 ways.

1. father signs affadavit of waiver
2. father signs denial of paternity
3. (alleged) father is cited for court hearing
4. publication.

The most important (or one of the most important) reasons to determinate rights of both parents prior to adoptive placement is to safeguard the adoption. Father can overturn adoptive placements if their rights are not terminated.

Please leave prepared statement with the committee secretary.

WITNESS STATEMENT

Name: Shirley [illegible] Date 1/12/23

Address [illegible] Support ? ✓

Representing Missouri Federal Credit Union Oppose ? _____

Which Bill ? H.B. 16 Amend ? _____

Comments:

Please leave prepared statement with the committee secretary.

TESTIMONY SUBMITTED IN SUPPORT OF THE UNIFORM PARENTAGE ACT

The Helena Women's Political Caucus urges passage of House Bill 10 known as the Uniform Parentage Act. The struggle for equal status under the law affects all of us whether we be women or men. The Uniform Parentage Act is a necessary step toward correcting discrimination practiced against men in the very important area of the parent-child relationship.

Outcomes of recent decisions in the U.S. Supreme Court and elsewhere necessitate that we affirm in our laws the rights of a father to a relationship with his natural child. The legal status of the relationship between a child's father and mother should have no bearing upon the legitimacy of the parent-child relationship. Indeed a parent-child relationship in which parental duties and obligations are amply met is of far greater significance to the future of our society than is the legality of a relationship between two adults.

The Uniform Parentage Act would also provide needed legal security to the adoptive parents of an illegitimate child while still conforming to the requirements established in recent court decisions.

We are concerned about what can be done during this time of social change and unrest to preserve and affirm basic parent-child relationships. We feel that the Uniform Parentage Act is a necessary step in that direction.

Respectfully,

Shirley J. Berg

JUDICIARY COMMITTEE

January 22, 1975

The eighth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol BUilding at Helena, Montana on Wednesday, January 22, 1975 at 9:00 AM. Representative Herb Huennekens, Chairman, presided. All members were present.

No bills were scheduled for hearing this date and committee immediately went into Executive Session.

EXECUTIVE SESSION

HOUSE BILL NO. 10 This bill known as the "Uniform Parentage Act" was put in subcommittee with Representative Scully as chairman, Representatives Anderson and Vencent as members. Representative Scully stated that the committee had been undecided on some trouble spots and would get the opinion of the entire committee in some areas.

The first amendment suggested by the subcommittee is on page 4, line 12 after the word "evidence" add the new language "if two or more presumptions arise" and strike the remaining portion of the subsection (2). He stated the committee felt that the facts of evidence would bring this out and that the court would decide on this. Representative Meloy questioned if this isn't clear and convircing, presents a larger burden to prove and decide.

The next amendment suggested by the subcommittee is on page 5, line 14 by striking "when action may be brought". Also on page 5, line 18 strike subsections (a) and (b). Also amend page 6, line 4 under section (2) because the committee felt the statute of limitations and time sequence should be in a section of its own and should be considered in only one section. Following discussion this second set of amendments was accepted by the committee.

The subcommittee discussed on page 7, section 8 regarding the eighteen years of age at which a child reaches majority. They decided five years was a legal waiting period. Lines 4 and 5 on page 7 should be changed to read "five (5) years" instead of "three (3) years". Also in line 6 of page 7 through line 9 strike from "however" through "majority".

Representative Meloy questioned the chief sponsor Representative Yardley on the proposal of the subcommittee to change on page 5, section 7 the five year statute of limitations on bringing action and also the proposal of the subcommittee to remove both subsection (a) and (b) on page 5. Representative [illegible] this was contradictory. Diana

Dowling, staff attorney, pointed out that on page 5 the bill talks about presuming father and child relationship which could be brought at any time. Representative Scully stated that he felt in order to bring finality to this process it should be limited to five years.

The subcommittee suggested amending on page 7, section 8, line 2 after "existence" the words "or non-existence". It was pointed out that page 5, section 7(a) refers to (a), (b) and (c) of 5(1). A suggestion was made to leave section (a) and (b) in section 7 alone. Another suggestion was to leave (a) like it is, lump (b) into (a) and change the time limit to five years. The final suggestion which entire committee accepted was to have two subsections under section 8; the first subsection would relate to limitation when father and child relationship is presumed and would include subsections (a) and (b) under section 7, giving a time limit of five years. The second subsection related to a child with no presumed father with a time limit of five years. Chairman Huennekens requested that Representative Scully write language accordingly as decided by committee.

The subcommittee then suggested amending on page 7, line 18 after "support" by adding the words "or adoption". Representative Moore questioned whether anything should be in the estate proceeding to which it was pointed out that section 8, line 9 talks about this.

Representative Scully stated the subcommittee had felt uncomfortable with the long arm statute basis in lines 19 through 25 but they don't have any suggestions on this. Representative Yardley explained that this statute provides for service by publication.

The subcommittee on page 8, lines 3 through 6 with regard to venue case, discussed the father-child situation but felt those lines should be left alone also. This was discussed and section explained by Diana Dowling.

The subcommittee recommended amending on page 9, line 2 by striking "need not be" and inserting "are" or "shall be". They felt rules of evidence should be followed. Representative Yardley agreed with this. Representative Kimble questioned why this was included here. Representative Yardley stated it was because of the fact that its a private hearing but doesn't think it is a good policy to put this in statutes.

Representative Meloy moved to amend on page 9, line 2 by striking the entire sentence "Rules of evidence need not be observed.". Much discussion followed. Amendment accepted by committee.

Representative Moore stated he felt that under section 14 the judicial branch is given an awful lot of power. He stated that if you are going to have a record why not just have a

hearing. Representative Yardley explained that this is an attempt to keep things confidential and not have a lot of publicity. He thinks we should be trying to protect adopted children.

Much discussion followed regarding blood tests as conclusive evidence and once this accomplished if the father could not be then end the case. Representative Hager questioned how determining these blood tests are and it was pointed out that subsection (2) and (3) speak to how expert these people are. Representative Meloy stated that there have been situations where the court has completely ignored scientific evidence. Motion to amend and put amendment in section 14 between subsection (3) and (4) was accepted with the exact language to be worked out to the effect "if the evidence clearly indicates the scientific analysis that the father could not be the father than the action should be dismissed".

The subcommittee suggested amending on page 12, line 24 by adding the material "this matter should be tried by the district court without a jury unless agreed to by all parties". Much discussion followed. Representative Yardley read section 26 in the Declaration of Rights of the New Constitution. Committee decided to not accept this proposed language.

Next amendment proposed by the subcommittee was to page 15, section 18, line 22 after the word "law" by striking the remaining material in lines 22 through 25 and continuing through line 4 on page 16, then merge subsection (2) in line 5 into subsection (1). Much discussion followed. Representative Scully stated he was bothered that welfare and public agencies may harrass a man who doesn't have the ability to pay.

The subcommittee next suggested amending on page 24 by adding a new subsection 29 which would read: "Following a determination of the existence of a parent-child relationship and upon petition by either party the court shall thereupon determine the custody of said child or children." Representative Yardley stated he thinks they have the authority to do this any way but it might be a good idea to put this in. Representative Meloy stated that to provide that someone may petition for custody is the reason for this extra section. Committee agreed to add this new section.

Chairman Huennekens stated he would entertain a motion DO PASS AS AMENDED. Motion DO PASS AS AMENDED by Representative Yardley was seconded by Representative Anderson. Representative Hager expressed concern for adopted parents and adopted children. Motion carried with Representative Hager voting no.

Representative Yardley apologized for fact that bill was not well written. Upon question from Representative Meloy, Representative Yardley stated he is satisfied now, the bill meets the basic qualifications.

The Chair thanked Representative Scully and his subcommittee for a job well done.

HOUSE BILL NO. 17 Representative Ora Halvorson was chairperson of subcommittee to study this bill. She stated that the problems with the bill had been discussed with chief sponsor Representative John Murphy and also Joan Woodgerd. It was realized that the problem couldn't be solved this year. Representative Murphy then consented to withdraw this bill. The subcommittee recommended that a select committee be named to study this issue in the next year. Representative Halvorson read a proposed joint resolution requesting a select committee and will pertain to general election rules. It was agreed that the committee will introduce this joint resolution as a committee bill. Motion carried unanimously on this.

Representative Meloy moved that House Bill No. 17 be indefinitely postponed. Representative Yardley stated the committee should act on bills and this bothers him. The only reason to hold a bill now is because of one in the senate.

A substitute motion by Representative Yardley of DO NOT PASS carried. Representative Meloy withdrew his original motion.

Representative Yardley expressed his appreciation for the assistance of the Judiciary Committee on House Bill No. 10.

The meeting adjourned at 10:35 AM.

Herb Huennekens

HERB HUENNEKENS, CHAIRMAN

HH:pb

JUDICIARY COMMITTEE

February 24, 1975

EXECUTIVE SESSION

The forty third meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Monday, February 24, 1975 at 7:55 PM. All members were present except Representatives Baeth, Kimble, and Rasmussen, absent, excused.

HOUSE BILL NO. 646 Chairman Huennekens stated that this is a McKittrick-Holmes bill to provide for one full time member of the board of pardons and transferring the board to the department of institutions.

Representative Seifert moved DO NOT PASS.

Representative Scully made a substitute motion to amend by striking subsection (3) on page 1. Motion to amend carried unanimously.

Representative Meloy moved to amend on page 2, following line 19 by inserting new material to read "at least one of whom shall have a masters degree in either sociology, criminology, psychology, cultural anthropology, political science, social work, guidance and counseling, or related discipline and at least one of whom shall have particular knowledge of Indian culture and problems." Motion to amend carried unanimously.

Representative Seifert moved DO NOT PASS AS AMENDED. A substitute motion by Representative Moore was made of DO PASS AS AMENDED. He stated this bill has more input and changes it makes than probably any other bill we've had in front of us. Criminologists, and parole boards all want this bill. Representative Scully stated he was in favor of this bill but couldn't see a full time three member parole board. Chairman Huennekens stated there was no opposition to this bill except one letter and they have changed their mind. Motion AS AMENDED DO PASS failed with a roll call vote. Bill will be reported out AS AMENDED DO NOT PASS.

Before the committee report could be completed and reported out Representative Polly Holmes went to work on the committee members. The result was a complete turn about and the bill was reported out AS AMENDED DO PASS. (see attached roll call vote which was recorded by Chairman Huennekens as he obtained the vote from each committee member while on the floor of the House).

HOUSE BILL NO. 275 Both of these bills pertain to laws relating to
HOUSE BILL NO. 10 adoptions. Representative Yardley is chief sponsor of House Bill No. 10 which was passed out of committee previously with a DO PASS AS AMENDED and then brought back to be studied in conjunction with HB 275 by Representative Fabrega at his request.

Representative Yardley stated that the way the amendments are HB 10 needs HB 275 and HB 275 to an extent needs HB 10. Amendments to both bills were worked out by Representative Yardley and all committee members were provided with a copy of same.

Representative Yardley stated there shouldn't be any conflicts, he is sure the bills are compatible.

Representative Meloy moved the amendments to HB 275. Motion carried unanimously.

Representative Moore moved the amendments to House Bill No. 10. Motion carried unanimously.

Representative Meloy moved House Bill No. 275 DO PASS AS AMENDED. Motion carried unanimously.

Representative Moore moved House Bill No. 10 DO PASS AS AMENDED. Motion carried unanimously.

HOUSE BILL NO. 613 Representative Halvorson moved DO PASS. Representative Seifert questioned if there weren't some proposed amendments for this bill by Representative Palmer. There were (see exhibit). Following discussion and comment by Diana Dowling, staff attorney, that she thinks they are trying to see that SRS or someone else has something to say before the adoption is all over with, Representative Meloy moved the first, second and third proposed amendments.

Representative Moore moved to amend the amendments on line 23 by striking "not a relative" and inserting "who is not a step child or relative". Representative Moore than stated that section 2 covers the department of welfare, it is amended in the back of the codes and this will have to be put in when the amendments are typed.

Representative Scully stated that he feels it is ridiculous for an attorney to have to have a license for handling adoptions. Representative Moore stated he has the same problem. Representative Scully stated he feels this bill is a complete waste of time, money and effort. Representative Moore stated this bill doesn't do anything for the child.

Representative Seifert made a motion for all motions pending of DO NOT PASS. Motion carried with a roll call vote.

HOUSE BILL NO. 460 Representative Moore read a list of amendments to the committee, explained them and then moved the amendments. (see exhibit) Included in these amendments is to change forty eight hours to seventy two hours. Motion to amend carried unanimously.

Representative Moore moved AS AMENDED DO PASS. Motion carried unanimously.

STANDING COMMITTEE REPORT

February 24, 19 75

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 10

A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS THE 'UNIFORM PARENTAGE ACT' RELATING TO MATTERS CONCERNING THE PARENT-CHILD RELATIONSHIP, ITS ESTABLISHMENT AND ITS TERMINATION; AMENDING SECTIONS 61-125 AND 61-205, R.C.M. 1947; AND REPEALING SECTIONS 61-103, 61-108, 93-2901-1 THROUGH 93-2901-11, R.C.M. 1947."

Respectfully report as follows: That HOUSE Bill No. 10

be amended in the second reading bill as follows:

1. Amend page 6, section 7, subsection (3), line 12.
   Following: "services or"
   Insert: "it's"

2. Amend page 6, section 7, subsection (3), line 13.
   Following: "appropriate"
   Strike: "county welfare department"
   Insert: "local affiliate"

3. Amend page 8, section 8, following line 4.
   Insert: "(3) After the conclusion of an adoption proceeding under Chapter 2, Title 61, no further action to declare the existence or non-existence of the father and child relationship of the adopted child may be commenced except as provided for in section 25 of this act for fraud, and section 61-206, R.C.M. 1947."

XXXXXXX

(Continued on page 2)

HH:pb

HERB HUENNEKENS, CHAIRMAN Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE OF REPRESENTATIVES February 24, 1975

COMMITTEE ON JUDICIARY AMENDMENTS TO HOUSE BILL NO. 10

4. Amend page 9, section 11, subsection (1), line 16.
Following: "proceeding"
Strike: "or any portion thereof"

5. Amend page 9, section 11, subsection (1), lines 16 and 17.
Following: "shall be kept"
Strike: "if any party requests, or the court orders"

6. Amend page 19, section 25, subsection (1), line 20.
Following: "who has"
Insert: "or does not have"

7. Amend page 20, section 25, subsection (a), line 1.
Following: "the"
Insert: "presumed or natural"

8. Amend page 20, section 25, subsection (a), line 2.
Following: "the"
Strike: "adoption proceeding and have the"
Insert: "court hearing to determine their"

9. Amend page 20, section 25, subsection (1)(c), line 3.
Following: "unless the"
Insert: "presumed father or unknown"

10. Amend page 20, section 25, subsection (2)(a), (b) and (c), lines 6 through 25 and page 21, subsection (4), lines 1 through 16.
Strike: Subsections (2)(a), (b) and (c), (3) and (4) in their entirety.

11. Amend page 21, section 25, subsection (5), line 10.
Following: "identify the natural father"
Insert: ", the presumed father,"

12. Amend page 21, section 25, subsection (5), line 18.
Following: "possible natural father"
Insert: ","

(Continued on page 3)

HOUSE OF REPRESENTATIVES February 24, 1975

COMMITTEE ON JUDICIARY AMENDMENTS TO HOUSE BILL NO. 10

13. Amend page 21, section 25, subsection (5), lines 19 and 20.
Following: "person has"
Strike: "appeared claiming to be the natural father and claiming"
Insert: "filed a notice of intent to claim paternity and claim the"

14. Amend page 21, section 25, subsection (5), line 21.
Following: "[illegible]minating the"
Strike: "unknown natural"

15. Amend page 21, section 25, subsection (5), lines 22 and 23.
Following: "child."
Strike: "Subject to the disposition of an appeal,"
Insert: "if no appeal is taken, then"

16. Amend page 22, section 25, subsection (5), line 1.
Following: "ground"
Strike: ". including"
Insert: "except"

17. Amend page 22, section 25, subsection (5), lines 1 through 4.
Following: "fraud"
Strike: ", misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter"
Insert: ". In the case of alleged fraud, the order cannot be questioned if more than six (6) months has expired since alleged fraud is discovered"

18. Amend page 22, section 25, subsection (6), lines 5 through 17.
Strike: Subsection (6) in its entirety.

AS SO AMENDED
DO PASS

HERB HUENNEKENS, CHAIRMAN

HH:pb

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
March 15, 1975

The meeting was called to order by Senator Towe, Chairman, at 9:35 A.M. Senator Drake was absent. All other committee members were present.

The following bills were heard:

HB 8	HB 560
HB 10	HB 640
HB 395	HJR 35

HB 8 -- HB 8, sponsored by Representative Gail Stoltz of District 14, was heard first. She stated that the purpose of the bill, entitled the Montana Code of Fair Practices, was to eliminate discrimination by the State of Montana, on the basis of race, color, creed, sex, age, marital status, physical or mental handicap, national origin or ancestry. The bill provides for complaints to be handled by the Human Rights Commission, and the House inserted an amendment prohibiting the requirement that quotas be established for representation of any group in state government.

Ms. Jan Gerke, representing Women's Lobby, Inc., stated that the bill would require that more than just lip service would be paid to minority representation in government and added her support.

Mrs. Margaret Davis, representing the Montana League of Women Voters, spoke in support of the bill, particularly the provisions concerning marital status and the mentally handicapped.

There were no further proponents and no opponents to the bill.

HB 10 -- HB 10, sponsored by Representative Dan Yardley of District 74, was heard next. Rep. Yardley stated that the bill, entitled the Uniform Parentage Act, was the product of an interim study, that the bill was designed to define and protect the parent-child relationship and that the bill provided for confidentiality in litigation concerning custody or other matters relating to the parent-child relationship. He added that section 25 of the bill conflicts with the provisions of HB 275 and is better than HB 275.

Pete Serdot of the Dept. of Social & Rehabilitation Services stated that he had been working in the adoption area for 10 years with the department and that the bill protects the rights of fathers, protects the rights of adoptive parents and provides for the best interests of children.

Tom Mahan, Attorney for the Dept. of Social & Rehabilitation Services, stated that he had been in court frequently on

HB 10 -- child custody matters. He concurred with Rep. Yardley that the procedures and rights enumerated in the bill would conflict with HB 275 and added that HB 10 is a good bill by which to the rights of all parties involved in custody cases, particularly the children.

There were no further proponents and no opponents to the bill.

HB 395 -- HB 395, sponsored by Representative Mike Meloy, District 29, was heard next. He stated that the purpose of the bill is to restore occupational licenses to individuals convicted of crimes after they are released from correctional institutions. He stated that the proposed law would give an opportunity to individuals who have paid their debt to society to reinstate themselves as citizens and taxpayers. He stated that this would help ex-felons with whom he had dealt that end up in prison again after release because they can not obtain employment. He added that the bill is a direct implementation of a provision of the new Montana Constitution.

Bob Campbell, Chairman of the Correctional Facilities and Services Committee of the Montana Bar Assn., spoke briefly in support of the bill and submitted written testimony (attached).

Lee Topash spoke in favor of the bill, stating that under present law, time spent in prison is only a down payment, since ex-felons are forced to pay for their crimes for the rest of their lives. He stated that ex-felons should have an opportunity to do something useful with their lives after release and this bill would provide such an opportunity.

John Frankino of the Montana Catholic Conference stated that on the basis of his experience with community-based corrections he had concluded that former offenders should have occupational privileges restored upon release in order for rehabilitation to take place.

Curt Chisholm of the Department of Institutions, stated that a letter of support from the department was included in Mr. Campbell's testimony and that the department supports the bill because it would alleviate the problems faced by former offenders as they are reintegrated into society.

In closing, Rep. Meloy stated that under present law the State of Montana does not permit felons to pay their debt to society by working in the areas in which they were trained. Current law is not conducive to rehabilitation, a problem which would be rectified by the bill.

There were no further proponents and no opponents to the bill.

NAME: _____ DATE: _____

ADDRESS _____

PHONE: _____

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: _____

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

HB 100 -- Senator Drake moved to amend a previous amendment to HB 100 on page 3, lines 2 and 3. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS GREELY AND ROBERTS VOTING NO AND SENATOR CETRONE ABSENT.

Senator Greely moved to amend the bill to eliminate the district court section. This would be the amendment in 7 (See attached Committee Report). THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS DRAKE, TURNAGE AND TOWE VOTING NO.

Senator Greely moved HB 100 be concurred in as amended. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS DRAKE AND TURNAGE VOTING NO.

HB 275 -- Senator Greely moved to amend the bill in amendments 1 through 10 on the attached Committee Report. WITH SENATOR TURNAGE VOTING NO, THE MOTION CARRIED ON A ROLL CALL VOTE.

Senator Towe moved to amend by striking Section 5 and instering new language (See attached Committee Report). THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Greely moved HB 275 be concurred in as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 10 -- Senator Turnage moved HB 10 be not conurred in. As a substitute motion Senator Greely moved to amend page 4 by adding a new subsection (f); page 5, by striking subsection (i); and page 23 by striking section 28 in its entirety. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATOR ROBERTS ABSENT.

Senator Turnage moved to amend page 4, line 11 (See attached Committee Report). THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATOR ROBERTS ABSENT.

Senator Warden moved to amend page 7, lines 19 and 20 by striking "five (5)" and inserting "three (3)". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATOR ROBERTS ABSENT.

Senator Greely moved HB 10 be concurred in as amended. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS DRAKE AND TURNAGE VOTING NO AND SENATOR ROBERTS ABSENT.

HB 602 -- Senator Drake moved to amend the title, line 4, page 2 reinserting the old language and striking the new; and to amend page 1, lines 16 and 17. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE WITH SENATOR ROBERTS ABSENT.

Senator Drake moved the Women's Bureau also be included in the bill and be transferred to the Dept. of Justice. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATOR ROBERTS ABSENT AND SENATORS GREELY AND CETRONE VOTING NO. Senators Greely and Cetrone stated they felt they

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
March 19, 1975

The meeting was called to order in Executive Session by Senator Towe, Chairman, at 5:28 P.M. in Room 442 of the Capitol Building. The committee members were all present.

The following bills were discussed:

HB 257	HB 100
HB 140	HB 10
HB 251	HB 275
HB 367	HB 602
HB 216	HB 670
HB 496	HB 82
HB 594	

EXECUTIVE SESSION

HB 257 -- Senator Drake moved that HB 257 be not concurred in. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATOR CETRONE VOTING NO.

HB 140 -- Senator Greely moved to amend page 3, line 7, by striking "fifteen cents (15¢) per mile" and inserting "a mileage allowance as defined in section 59-801". THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Turnage moved HB 140 be concurred in as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 251 -- Senator Turnage moved HB 251 be not concurred in. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 367 -- Senator Drake moved to amend page 1, lines 17, 18, 19 and 21 through line 1 on page 2. (See attached Committee Report). THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE

Senator Drake moved HB 367 be concurred in as amended. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 216 -- Senator Turnage moved HB 216 be concurred in. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 496 -- Senator Drake moved HB 496 be not concurred in. THE MOTION FAILED WITH SENATORS DRAKE AND TURNAGE VOTING YES.

Senator Greely moved to reinsert the stricken material in the title and on page 2. THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Greely moved HB 496 be concurred in as amended. THE MOTION CARRIED ON A ROLL CALL VOTE WITH SENATORS DRAKE AND TURNAGE VOTING NO.

HOUSE BILL NO. 10

INTRODUCED BY YARDLEY, STOLTZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS THE 'UNIFORM PARENTAGE ACT' RELATING TO MATTERS CONCERNING THE PARENT-CHILD RELATIONSHIP, ITS ESTABLISHMENT AND ITS TERMINATION; AMENDING SECTIONS 61-105 AND 61-205, R.C.M. 1947; AND REPEALING SECTIONS 61-103, 61-108, 93-2901-1 THROUGH 93-2901-11, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. This act may be cited as the "Uniform Parentage Act".

Section 2. Parent and child relationship defined. As used in this act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

Section 3. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

Section 4. How parent and child relationship established. The parent and child relationship between a child and

(1) the natural mother may be established by proof of her having given birth to the child, or under this act;

(2) the natural father may be established under this act;

(3) an adoptive parent may be established by proof of adoption.

Section 5. Presumption of paternity. (1) A man is presumed to be the natural father of a child if:

(a) he and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;

(b) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred (300) days after its termination by death, annulment, declaration of

REFERENCE BILL

invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within three hundred (300) days after the termination of cohabitation;

(c) after the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) he has acknowledged his paternity of the child in writing filed with the department of health and environmental sciences or with the district court for the county where he resides, or

(ii) with his consent, he is named as the child's father on the child's birth certificate, or

(iii) he is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(e) he acknowledges his paternity of the child in a writing filed with the department of health and environmental sciences or with the district court of the county where he resides, which court or department shall promptly inform the mother of the filing of the

acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health and environmental sciences or with the district court of the county where the acknowledgment was filed. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted~~,~~; OR

~~(F) HE FILES A TIMELY NOTICE OF INTENT TO CLAIM PATERNITY PURSUANT TO SECTION 61-141 R.C.M. 1947.~~

(2) A presumption under this section may be rebutted in an appropriate action ~~only~~ by ~~clear and convincing~~ A PREPONDERANCE OF THE evidence. ~~If two (2) or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.~~

Section 6. Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and

signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the department of health and environmental sciences, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

Section 7. Determination of father and child relationship — who may bring action ~~— when action may be brought. (1) A child, his natural mother, or a man presumed to be his father under paragraph (a), (b), or (c) of section 5(1), may bring an action:~~

~~(a) at any time for the purpose of declaring the existence of the father and child relationship presumed under paragraph (a), (b), or (c) of section 5(1); or~~

~~(b) for the purpose of declaring the nonexistence of the father and child relationship presumed under paragraph~~

~~(a), (b), or (c) of section 5(1) only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than five (5) years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.~~

~~(2)~~ (1) Any interested party may bring an action ~~at any time~~ for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to section 5.

~~(3)~~ (2) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 5 may be brought by the child, the mother or personal representative of the child, the department of social and rehabilitation services or ITS ~~the~~ appropriate ~~county welfare department~~ LOCAL AFFILIATE, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

~~(4)~~ (3) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 14(2), between an alleged or presumed father and the mother or child, does not bar an action under this section.

~~(5)~~ (4) If an action under this section is brought

before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

Section 8. Statute of limitations. (1) LIMITATION WHEN FATHER AND CHILD RELATIONSHIP IS PRESUMED.

(A) AN ACTION MAY BE COMMENCED AT ANY TIME FOR THE PURPOSE OF DECLARING THE EXISTENCE OF THE FATHER AND CHILD RELATIONSHIP PRESUMED UNDER PARAGRAPH (A), (B), OR (C) OF SECTION 5(1); OR

(B) FOR THE PURPOSE OF DECLARING THE NONEXISTENCE OF THE FATHER AND CHILD RELATIONSHIP PRESUMED UNDER PARAGRAPH (A), (B), OR (C) OF SECTION 5(1) ONLY IF THE ACTION IS BROUGHT WITHIN A REASONABLE TIME AFTER OBTAINING KNOWLEDGE OF RELEVANT FACTS, BUT IN NO EVENT LATER THAN FIVE (5) YEARS AFTER THE CHILD'S BIRTH. AFTER THE PRESUMPTION HAS BEEN REBUTTED, PATERNITY OF THE CHILD BY ANOTHER MAN MAY BE DETERMINED IN THE SAME ACTION, IF HE HAS BEEN MADE A PARTY.

(2) LIMITATIONS WHEN FATHER-CHILD RELATIONSHIP IS NOT PRESUMED. An action to determine the existence OR NONEXISTENCE of the father and child relationship as to a child who has no presumed father under section 5 may not be brought later than ~~three (3)~~ ~~FIVE (5)~~ THREE (3) years after the birth of the child, or later than ~~three (3)~~ ~~FIVE (5)~~ THREE (3) years after the effective date of this act, whichever is later. ~~However, an action brought by or on~~

~~behalf of a child whose paternity has not been determined is not barred until three (3) years after the child reaches the age of majority.~~ Sections 7 and 8 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

(3) AFTER THE CONCLUSION OF AN ADOPTION PROCEEDING UNDER CHAPTER 2, TITLE 61, NO FURTHER ACTION TO DECLARE THE EXISTENCE OR NONEXISTENCE OF THE FATHER AND CHILD RELATIONSHIP OF THE ADOPTED CHILD MAY BE COMMENCED EXCEPT AS PROVIDED FOR IN SECTION 25 OF THIS ACT FOR FRAUD, AND SECTION 61-206, R.C.M. 1947.

Section 9. Jurisdiction--venue. (1) The district court has jurisdiction of an action brought under this act. The action may be joined with an action for divorce, annulment, separate maintenance, ~~or~~ support, OR ADOPTION.

(2) ~~A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this act with respect to a child who may have been conceived by that act of intercourse~~ FOR PURPOSES OF AN ACTION BROUGHT UNDER THIS ACT PERSONAL JURISDICTION IS ESTABLISHED IN THE COURTS OF THIS STATE OVER ANY PERSON WHO HAS HAD SEXUAL INTERCOURSE IN THIS STATE WHICH HAS RESULTED IN THE BIRTH OF A CHILD WHO IS THE

SUBJECT OF SUCH PROCEEDINGS. In addition to any other method provided by rule or statute, including Rule 4B of the Montana Rules of Civil Procedure, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana Rules of Civil Procedure.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

Section 10. Parties. The child shall be made a party to the action. If he is a minor he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the department of social and rehabilitation services or the appropriate county welfare department as guardian ad litem for the child. The natural mother, each man presumed to be the father under section 5, and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

Section 11. Pre-trial proceedings. (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been

brought, an informal hearing shall be held. The court may order that the hearing be held before a referee. The public shall be barred from the hearing. A record of the proceeding ~~or any portion thereof~~ shall be kept ~~if any party requests, or the court orders~~. ~~Rules of evidence need not be observed.~~

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.

~~(3) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.~~

Section 12. Blood tests. (1) The court may, and upon request of a party shall, require the child, mother, or

alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(3) In all cases, the court shall determine the number and qualifications of the experts.

Section 13. Evidence relating to paternity. Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of

paternity of the child.

Section 14. Pre-trial recommendations. (1) On the basis of the information produced at the pre-trial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) that the action be dismissed with or without prejudice;

(b) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child in the light of the factors enumerated in section 16(5), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child

in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(c) that the alleged father voluntarily acknowledge his paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1), judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(4) IF THE SCIENTIFIC EVIDENCE RESULTING FROM THE BLOOD TESTS CONCLUSIVELY SHOWS THAT THE DEFENDANT COULD NOT HAVE BEEN THE FATHER THEN THE INSTANT ACTION SHALL BE DISMISSED.

~~(4)~~ (5) The guardian ad litem may accept or refuse to accept a recommendation under this section.

~~(5)~~ (6) The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection (1) or (3).

Section 15. Civil action. (1) An action under this act is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Section 11, subsections (2) and (3) and sections 12 and 13 apply to all action brought under this act.

(2) Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

Section 16. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under section 24.

(3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(5) In determining the amount to be paid by a parent

for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others; and

(i) the value of services contributed by the custodial parent.

Section 17. Costs. The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pre-trial proceedings, including blood tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid out of the treasury of the county in which the action is brought.

Section 18. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this act or under prior law~~, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.~~

~~(2) The~~ THE court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

~~(3)~~ (2) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

Section 19. Modification of judgment or order. The court has continuing jurisdiction to modify or revoke a judgment or order

(1) for future education and support, and

(2) with respect to matters listed in section 16, subsections (3) and (4) and section 18(2), except that a court entering a judgment or order for the payment of a lump

sum or the purchase of an annuity under section 16(4) may specify that the judgment or order may not be modified or revoked.

Section 20. Rights to counsel--free transcript on appeal. (1) At the pre-trial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(2) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

Section 21. Hearings and records--confidentiality. Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any agency of the state or of any political subdivision or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

Section 22. Action to declare mother and child relationship. Any interested party may bring an action to

determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this act applicable to the father and child relationship apply.

Section 23. Promise to render support. (1) Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to section 7(4).

(2) In the best interest of the child or the mother, the court may, and upon the provision's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

Section 24. Birth records. (1) Upon order of a court of this state or upon request of a court of another state, the department of health and environmental sciences shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.

(3) The evidence upon which the new certificate was

made and the original birth certificate shall be kept in a sealed and confidential file and shall be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

Section 25. Custodial proceedings. (1) If a mother relinquishes or proposes to relinquish for adoption a child who has ~~OR DOES NOT HAVE~~:

(a) a presumed father under section 5(1),

(b) a father whose relationship to the child has been determined by a court, or

(c) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the ~~PRESUMED OR NATURAL~~ father shall be given notice of the ~~adoption proceeding and have the COURT HEARING TO DETERMINE THEIR~~ ADOPTION PROCEEDING AND HAVE THE rights provided under sections 61-205 and 61-206, R.C.M. 1947, unless the ~~PRESUMED FATHER OR UNKNOWN~~ father's relationship to the child has been previously terminated or determined by a court not to exist.

(2) IF A MOTHER RELINQUISHES OR PROPOSES TO RELINQUISH FOR ADOPTION A CHILD WHO DOES NOT HAVE:

(A) A PRESUMED FATHER UNDER SECTION 5 (1),

(B) A FATHER WHOSE RELATIONSHIP TO THE CHILD HAS BEEN DETERMINED BY A COURT, OR

(C) A FATHER AS TO WHOM THE CHILD IS A LEGITIMATE CHILD UNDER PRIOR LAW OF THIS STATE OR UNDER THE LAW OF ANOTHER JURISDICTION, OR IF A CHILD OTHERWISE BECOMES THE SUBJECT OF AN ADOPTION PROCEEDING, THE AGENCY OR PERSON TO WHOM THE CHILD HAS BEEN OR IS TO BE RELINQUISHED, OR THE MOTHER OR THE PERSON HAVING CUSTODY OF THE CHILD, SHALL FILE A PETITION IN THE DISTRICT COURT TO TERMINATE THE PARENTAL RIGHTS OF THE FATHER, UNLESS THE FATHER'S RELATIONSHIP TO THE CHILD HAS BEEN PREVIOUSLY TERMINATED OR DETERMINED NOT TO EXIST BY A COURT.

(3) IN AN EFFORT TO IDENTIFY THE NATURAL FATHER, THE COURT SHALL CAUSE INQUIRY TO BE MADE OF THE MOTHER AND ANY OTHER APPROPRIATE PERSON. THE INQUIRY SHALL INCLUDE THE FOLLOWING: WHETHER THE MOTHER WAS MARRIED AT THE TIME OF CONCEPTION OF THE CHILD OR AT ANY TIME THEREAFTER; WHETHER THE MOTHER WAS COHABITING WITH A MAN AT THE TIME OF CONCEPTION OR BIRTH OF THE CHILD; WHETHER THE MOTHER HAS RECEIVED SUPPORT PAYMENTS OR PROMISES OF SUPPORT WITH RESPECT TO THE CHILD OR IN CONNECTION WITH HER PREGNANCY; OR WHETHER ANY MAN HAS FORMALLY OR INFORMALLY ACKNOWLEDGED OR DECLARED HIS POSSIBLE PATERNITY OF THE CHILD. NOTWITHSTANDING THIS SECTION OR ANY OTHER PROVISION OF LAW AND IN CONSIDERATION OF HER RIGHT TO PRIVACY, NO MOTHER OF A CHILD SUBJECT TO PROCEEDINGS UNDER THIS ACT MAY BE COMPELLED TO TESTIFY TO, OR DIVULGE THE IDENTITY OF, THE FATHER OR

POSSIBLE FATHER OF THAT CHILD.

(4) IF, AFTER THE INQUIRY, THE NATURAL FATHER IS IDENTIFIED TO THE SATISFACTION OF THE COURT, OR IF MORE THAN ONE MAN IS IDENTIFIED AS A POSSIBLE FATHER, EACH SHALL BE GIVEN NOTICE OF THE PROCEEDING IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION. IF ANY OF THEM FAILS TO APPEAR, OR, IF APPEARING, FAILS TO CLAIM CUSTODIAL RIGHTS, HIS PARENTAL RIGHTS WITH REFERENCE TO THE CHILD SHALL BE TERMINATED. IF THE NATURAL FATHER OR A MAN REPRESENTING HIMSELF TO BE THE NATURAL FATHER, CLAIMS CUSTODIAL RIGHTS, THE COURT SHALL PROCEED TO DETERMINE CUSTODIAL RIGHTS.

~~(2) If a mother relinquishes or proposes to relinquish for adoption a child who does not have:~~

~~(a) a presumed father under section 5(1);~~

~~(b) a father whose relationship to the child has been determined by a court; or~~

~~(c) a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction; or if a child otherwise becomes the subject of an adoption proceedings, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not~~

~~to exist by a court.~~

~~(3) In an effort to identify the natural father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of conception of the child at any time thereafter, whether the mother was cohabiting with a man at the time of conception or birth of the child, whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy, or whether any man has formally or informally acknowledged or declared his possible paternity of the child.~~

~~(4) If, after the inquiry, the natural father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with subsection (6) of this section. If any of them fails to appear, or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the court shall proceed to determine custodial rights.~~

~~(5)~~ (2)(5) If, after the inquiry, the court is unable to identify the natural father, ~~THE PRESUMED FATHER,~~ or any possible natural father, and no person has ~~appeared claiming~~

~~to be the natural father and claiming~~ ~~FILED A NOTICE OF INTENT TO CLAIM PATERNITY AND CLAIM THE~~ APPEARED CLAIMING TO BE THE NATURAL FATHER AND CLAIMING custodial rights, the court shall enter an order terminating the ~~unknown natural~~ UNKNOWN NATURAL father's parental rights with reference to the child. ~~Subject to the disposition of an appeal, IF NO APPEAL IS TAKEN, THEN~~ SUBJECT TO THE DISPOSITION OF AN APPEAL, upon the expiration of six (6) months after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner, or upon any ground, ~~, including~~ ~~EXCEPT~~ INCLUDING fraud, MISREPRESENTATION, FAILURE TO GIVE ANY REQUIRED NOTICE, OR LACK OF JURISDICTION OF THE PARTIES OR OF THE SUBJECT MATTER ~~, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter. IN THE CASE OF ALLEGED FRAUD, THE ORDER CANNOT BE QUESTIONED IF MORE THAN SIX (6) MONTHS HAS EXPIRED SINCE ALLEGED FRAUD IS DISCOVERED.~~

(6) NOTICE OF THE PROCEEDING SHALL BE GIVEN TO EVERY PERSON IDENTIFIED AS THE NATURAL FATHER OR A POSSIBLE NATURAL FATHER IN THE MANNER APPROPRIATE UNDER RULES OF CIVIL PROCEDURE FOR THE SERVICE OF PROCESS IN A CIVIL ACTION IN THIS STATE, OR IN ANY MANNER THE COURT DIRECTS. PROOF OF GIVING THE NOTICE SHALL BE FILED WITH THE COURT BEFORE THE PETITION IS HEARD. IF NO PERSON HAS BEEN IDENTIFIED AS THE

NATURAL FATHER OR A POSSIBLE FATHER, THE COURT, ON THE BASIS OF ALL INFORMATION AVAILABLE, SHALL DETERMINE WHETHER PUBLICATION OR PUBLIC POSTING OF NOTICE OF THE PROCEEDING IS LIKELY TO LEAD TO IDENTIFICATION AND, IF SO, SHALL ORDER PUBLICATION OR PUBLIC POSTING AT TIMES AND IN PLACES AND MANNER IT DEEMS APPROPRIATE.

~~(6) Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state, or in any manner the court directs. Proof of giving the notice shall be filed with the court before the petition is heard. If no person has been identified as the natural father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate.~~

~~Section 26. Uniformity of application and construction. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.~~

Section 26. Section 61-105, R.C.M. 1947, is amended to read as follows:

"61-105. Custody of legitimate child. The father and mother of ~~a legitimate~~ an unmarried minor child are equally entitled to its custody, services, and earnings. If either parent be dead, or unable, or refuse to take the custody, or has abandoned his or her family, the other is entitled to its custody, services, and earnings."

~~Section 28. Section 61-205, R.C.M. 1947, is amended to read as follows:~~

~~"61-205. Persons required to consent to the adoption. An adoption of a child may be decreed when there have been filed written consents to adoption executed by:~~

~~(1) Both parents, if living, or the surviving parent, of a legitimate child; provided, that consent shall not be required from a father or mother,~~

~~(a) adjudged guilty by a court of competent jurisdiction of physical cruelty toward said child; or,~~

~~(b) adjudged to be an habitual drunkard; or,~~

~~(c) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child; or,~~

~~(d) who has, in the state of Montana, or in any other state of the United States, willfully abandoned such child; or,~~

~~(e) who has caused the child to be maintained by any public or private children's institution, charitable agency,~~

~~or any licensed adoption agency, or the state department of public welfare of the state of Montana for a period of one (1) year without contributing to the support of said child during said period, if able; or,~~

~~(c) if it is proven to the satisfaction of the court that said father or mother, if able, has not contributed to the support of said child during a period of one (1) year before the filing of a petition for adoption; or (an adoption of a child may be decreed when there have been filed written consents to adoption executed by).~~

~~(2) The mother, alone, if the child is illegitimate; or,~~

~~(3)~~ (2) ~~The~~ The legal guardian of the person of the child ~~if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption; or,~~

~~(4)~~ (3) ~~The~~ The executive head of an agency if the child ~~has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated, or if both parents are dead, and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or,~~

~~(5)~~ (4) ~~Any~~ Any person having legal custody of a child ~~by court order if the parental rights of the parents have been~~

~~judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the petition.~~

~~The consents required by paragraphs (1) and (2) shall be acknowledged before an officer authorized to take acknowledgments, or witnessed by a representative of the state department of public welfare or of an agency, or witnessed by a representative of the court.~~"

SECTION 27. SECTION 61-205, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"61-205. Persons required to consent to the adoption. An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(1) Both parents, if living, or the surviving parent, of a ~~legitimate~~ child; provided, that consent shall not be required from a father or mother,

(a) adjudged guilty by a court of competent jurisdiction of physical cruelty toward said child; or,

(b) adjudged to be an habitual drunkard; or,

(c) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child; or,

(d) who has, in the state of Montana, or in any other state of the United States, willfully abandoned such child;

or,

(e) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency, or the state department of social and rehabilitation services of the state of Montana for a period of one (1) year without contributing to the support of said child during said period, if able; or,

(f) if it is proven to the satisfaction of the court that said father or mother, if able, has not contributed to the support of said child during a period of one (1) year before the filing of a petition for adoption; or (an adoption of a child may be decreed when there have been filed written consents to adoption executed by).

~~(2) The mother, alone, if the child is illegitimate; or,~~

~~(3)~~ (2) The legal guardian of the person of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption; or,

~~(4)~~ (3) The executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated, or if both parents are dead, and custody of the child has been legally vested in such agency with authority to consent to

adoption of the child; or,

~~(5)~~ (4) Any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption, and a certified copy of its order shall be attached to the petition.

The consents required by paragraphs (1) and (2) shall be acknowledged before an officer authorized to take acknowledgments, or witnessed by a representative of the state department of social and rehabilitation services or of an agency, or witnessed by a representative of the court."

SECTION 28. FOLLOWING A DETERMINATION OF THE EXISTENCE OF A PARENT-CHILD RELATIONSHIP AND UPON PETITION BY EITHER PARTY THE COURT SHALL THEREUPON DETERMINE THE CUSTODY OF SAID CHILD OR CHILDREN.

Section 29. Uniformity of application and construction. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

Section 30. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to

this end the provisions of this act are severable.

Section 31. Repeal. Sections 93-2901-1 through 93-2901-11, 61-103, and 61-108, R.C.M. 1947, are repealed.

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